

**REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES TO PROVIDE  
INDEPENDENT REVIEWER SERVICES PURSUANT TO SECTION 1156 OF  
TITLE 12 OF THE DELAWARE CODE ISSUED BY DELAWARE  
DEPARTMENT OF FINANCE  
CONTRACT NUMBER 2501010701**

**Consolidated Responses dated September 17, 2010 to Requests for Clarification  
Pursuant to Section IV.B.14.a of Requests for Proposals for Professional Services to  
Provide Independent Reviewer Services Pursuant to Section 1156 of Title 12 of the  
Delaware Code**

Two requests for clarification have been received with respect to Section IV.D.5.e.1 of the above-referenced request for proposals. The text as to which the requests for clarification pertain is set forth below:

By submitting a proposal, the proposing Vendor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of Delaware, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the Vendor's its agents and employees' performance work or services in connection with the contract, regardless of whether such suits, actions, claims or liabilities are based upon acts or failures to act attributable, in whole or part, to the State, its employees or agents.

The requests for clarification are as follows:

1. Our question concerns the General Indemnification Section located on page 20 of the RFP. Essentially this section would require a successful applicant to indemnify the State against any suits or awards rendered as a consequence of the independent reviewer's decision. This appears to require the vendor to indemnify the State for the costs of defending litigation by an unsuccessful claimant, for example. Are independent reviewers covered by the State's statutory immunity? Would greatly appreciate some clarification.
2. As the Independent Reviewer will be an attorney or former member of the judiciary or master and render an opinion that may be challenged by either party, which opinion will be sent, along with the Secretary of Finance's determination, if any, to the holder under 12 Del. C. Section 1156, and as a Court may review whether the Secretary's determination was supported by substantial evidence on the record and if not, remand, does this provision mean that the Independent Reviewer must indemnify and pay attorneys' fees if the Secretary or Reviewer is sued due to the opinion? This seemingly would hold the independent reviewer liable for

acting in a quasi-judicial capacity. Would State immunity apply to the Independent Reviewer?

The response of the Department of Finance to the requests for clarification is as follows:

Successful bidders who are awarded a contract will not be considered judges, public officers or employees under the State's Tort Claims Act, 10 *Del. C.* §4001. Thus, the qualified (or in the case of judges, absolute) immunity conferred by that statute will not apply. The scope of what would be indemnifiable by successful bidders under the language of IV. D. 5. e. 1 will be dependent on the facts and circumstances of the particular case.